IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 454 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SATYENDRANATH SEN

Versus

STATE OF GUJARAT

Appearance:

MR AD SHAH for Petitioner

MR. K.G. SHETH A.P.P for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 12/04/2001

ORAL JUDGEMENT

1. This is an application in Revision under Section 397 of the Code of Criminal Procedure, 1973 by the petitioner - original complainant in Criminal Case No.

2023/1987 challenging an order of the learned Metropolitan Magistrate, Court No. 16 at Ahmedabad dated 06.08.1993 dismissing the said complaint of the said petitioner - original complainant, on account of his absence in the said matter on the said date. The petitioner above named had preferred the aforesaid complaint before the learned Metropolitan Magistrate, Court No. 16 for offences punishable under Section 409, 477 (A) of the Indian Penal Code against the respondent. It appears that an application was submitted by the present petitioner before the learned Magistrate that permission may be granted to examine the witness before the examination of the complainant. Therefore, summons was ordered to be issued to the witness on 16.02.1989. The petitioner has contended that despite the said position the matter was being adjourned time and again, and on 06.08.1993 the petitioner was not present and the complaint was dismissed in his absence and thereafter, an application was submitted to proceed ahead in absence of the complainant on the same date. It was also turned down by the learned Magistrate on the ground that he had already dismissed the complaint in absence of the petitioner.

2. Feeling aggrieved by the said order of dismissal of the complaint, in the absence of the complainant, the petitioner has preferred this Revision Application before this Court. It has been mainly contended that the personal attendance of the original complainant was not required because the witnesses were to be examined before the examination of the complainant, and therefore, the order dismissing the complaint and discharging the second respondent is illegal and deserves to be set-aside.

3. It is therefore prayed that Criminal Revision Application in question may be allowed, the aforesaid order of the learned Magistrate dated 06.08.1993 be set-aside and the matter may be directed to be proceeded ahead according to law before the Trial Court.

4. On receipt of the Revision Application rule was issued. At the first instance, Mr. K.G. Sheth, learned Additional Public Prosecutor appears for respondent no. 1. The respondent no. 2 has been duly served, but he remained absent.

5. At the hearing I have heard Ms. Vimla Nailwal on behalf of Mr. A.D. Shah, for the petitioner. Mr. K.G. Sheth, learned Additional Public Prosecutor appears for the State. Respondent no. 2 did not appear. On going through the records it is found that the original

complainant had submitted an application before the Trial Court stating that it was necessary to prove certain documents through certain witnesses and therefore it was necessary to examine the said witnesses to the said documents before the examination of the original complainant. The said application was submitted on 26th July, 1988 and after hearing, the learned Magistrate had passed an order on 16.02.1989 directing to issue summons as prayed in the said application. This should mean that the learned Magistrate was agreeable to the submission of the original complainant to the effect that the witnesses stated in the said application may be examined before the examination of the original - complainant. In that view of the matter, it is very clear that the presence of the original complainant was not required on 06.08.1993 and the learned Magistrate could have proceeded ahead in absence of the complainant. It seems that even the advocate for the complainant was also not present when the matter was called out. However, it has been made clear that even in the past, the witnesses were kept present but the case could not proceed because the other side sought adjournment on one or the other ground.

6. It seems that complaint itself shows that the original complainant was a resident of Rajasthan State and there may be some case of communication gap. It is not clear as to whether or not witnesses were present on 06.08.1993 but it is a matter of record that after the dismissal of the complaint, as aforesaid, the learned Advocate for the original complainant had submitted an application on 06.08.1993 to proceed ahead in absence of the complainant. This application indicates that the witnesses may be present for examination on that day. Having regard to the aforesaid facts and circumstances I am of the opinion that the learned Magistrate could have waited for some time for the Advocate for the complainant to come. It also transpires from the record that the witnesses may be present on 06.08.1993. On overall consideration of the matter I am of the opinion that this is a fit case wherein the Court should exercise its Revisional jurisdictional to do substantial justice to the complainant which can be done only by setting aside the aforesaid order of the learned Magistrate. The learned Additional Public Prosecutor appearing for respondent no. 1, State of Gujarat supports the aforesaid view, and the aforesaid argument advanced on behalf of the petitioner. In above view of the matter this Criminal Application is ordered to be allowed. The order passed by the learned Magistrate on 06.08.1993 dismissing the complaint of the original complainant and discharging the second respondent is ordered to be

set-aside. The matter is remanded back to the Trial Court. The learned Magistrate shall proceed ahead with Trial in the said matter at the stage at which it was pending when the impugned order came to be passed. Rule made absolute.

(D.P. BUCH,J.)

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